



Federal Communications Commission  
Washington, D.C. 20554

October 7, 2005

**DA 05-2663**

**Released: October 7, 2005**

UPN Television Stations Inc.<sup>1</sup>  
WUPL(TV)  
2000 K Street, NW  
Suite 725  
Washington, DC 20006-1809

Re: UPN Television Stations Inc.  
WUPL(TV), Slidell, Louisiana  
Facility I.D. No. 13938  
File No. BRCT-20050201AYM  
NAL/Acct. No. 0641420001  
FRN: 0003471398

Dear Licensee:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR FORFEITURE in the amount of four thousand dollars (\$4,000) pursuant to Section 503(b) of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 503(b), under authority delegated to the Chief of the Media Bureau by Section 0.283 of the Commission's Rules (Rules), 47 C.F.R. § 0.283, for willful and repeated violations of the Commission's rule requiring each commercial broadcast station to place in its public inspection file Children's Television Programming Reports, records concerning compliance with commercial limits, and TV issues/programs lists.

Under the Commission's rules implementing the Children's Television Act of 1990 (CTA),<sup>2</sup> each television broadcast station licensee has an obligation, during its license term, to air programming that serves the educational and informational needs of children through both the licensee's overall programming and programming "specifically designed" to educate and inform children (core programming).<sup>3</sup> Section 73.671 of the Rules provides that, in order to qualify as core programming, a show must have serving the educational and informational needs of children ages 16 and under as a significant purpose.<sup>4</sup> In addition, a core program must be a

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<sup>1</sup> On July 8, 2005, the licensee filed an amendment to the instant renewal application to reflect a pro forma assignment of license for station WUPL(TV) from UPN Television Stations Inc. to Infinity Radio Inc. This assignment transaction was consummated on June 30, 2005. (BALCT-20050613AFX).

<sup>2</sup> Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. Sections 303a, 303b and 394.

<sup>3</sup> 47 C.F.R. § 73.671(a).

<sup>4</sup> 47 C.F.R. § 73.671(c)(1).

regularly scheduled, weekly program of at least 30 minutes, and aired between 7:00 a.m. and 10 p.m.<sup>5</sup> Further, the licensee's Children's Television Programming Report (FCC Form 398) must specify the educational and informational objective and target child audience.<sup>6</sup> In addition, the licensee must provide to publishers of program guides, instructions for listing the program as educational/informational, including an indication of the age group for which the program is intended.<sup>7</sup>

The Commission adopted a processing guideline to provide broadcasters with certainty about how to comply with the CTA and to facilitate its own processing efforts in reviewing license renewal applications for compliance with the statute. Pursuant to that processing guideline, a licensee will receive staff-level approval of the children's educational television programming portion of its renewal application if it aired three hours per week of core programming (averaged over a six-month period).<sup>8</sup> A licensee that aired somewhat less than three hours, but aired a package of different programming that demonstrates a level of commitment to educating and informing children, will also receive staff-level approval.

Moreover, the Commission's rules require commercial licensees to provide information to the public about the shows they air to fulfill their obligation. Section 73.3526(e)(11) of the Rules requires each commercial television broadcast station to prepare and place in its public inspection file a Children's Television Programming Report for each calendar quarter reflecting, *inter alia*, the efforts it has made during the quarter to serve the educational needs of children. As set forth in Section 73.3526, licensees are also required to file the reports with the Commission and to publicize the existence and location of the reports.

Further, in the CTA, Congress directed the Commission to adopt rules, *inter alia*, limiting the amount of commercial matter that television stations may air during children's programming, and to consider in its review of television license renewals the extent to which the licensee has complied with such commercial limits. Accordingly, the Commission adopted Section 73.670 of the Rules, 47 C.F.R. § 73.670, which limits the amount of commercial matter which may be aired during children's programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. *Children's Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991). The commercial limitations became effective on January 1, 1992. *Children's Television Programming*, 6 FCC Rcd 5529, 5530 (1991).

In addition, Section 73.3526 of the Rules requires broadcast licensees to maintain a public inspection file containing specific types of information related to station operations.<sup>9</sup> As set

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<sup>5</sup> 47 C.F.R. § 73.671(c)(2-4).

<sup>6</sup> 47 C.F.R. § 73.671(c)(5).

<sup>7</sup> 47 C.F.R. §§ 73.671(c)(6), 73.673.

<sup>8</sup> 47 C.F.R. § 73.671, Note 2.

<sup>9</sup> See 47 C.F.R. § 73.3526.

forth in Section 73.3526(e)(11)(iii) of the Rules, each commercial television broadcast station is required to prepare and place in its public inspection file a Children's Television Programming Report for each calendar quarter reflecting, *inter alia*, the efforts it has made during the quarter to serve the educational needs of children. Also, pursuant to Section 73.3526(e)(11)(ii) of the Rules, each commercial television broadcast station is required to place in its public inspection file on a quarterly basis, records sufficient to allow substantiation of the licensee's certification in its renewal application, of compliance with the children's television commercial limits. Also, Section 73.3526(e)(11)(i) provides that a TV issues/programs list is to be placed in a commercial TV broadcast station's public inspection file each calendar quarter. Section 73.3526 also requires licensees to place records concerning commercial limits, Forms 398, and TV issues/programs lists for each quarter in the station's public inspection file by the tenth day of the succeeding calendar quarter. Where lapses occur in maintaining the public file, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.<sup>10</sup>

On February 1, 2005, you filed a license renewal application (FCC Form 303-S) for station WUPL(TV), Slidell, Louisiana (File No. BRCT-20050201AYM). In response to Section IV, Question 3 of that application, you certify that, during the previous license term, station WUPL(TV) failed to place in its public inspection file at the appropriate times, the documentation required by Section 73.3526 of the Commission's Rules. In Exhibit 17 to station WUPL(TV)'s renewal application, you indicate that a review of the station's public inspection file revealed that several documents were missing. Specifically, you state that the station's TV issues/programs lists for the third quarter of 1997, fourth quarter of 1997, third quarter of 1998, first quarter of 1999, and third quarter of 2001 were missing from station WUPL(TV)'s public file. You also indicate that the station's Children's Television Programming Reports for the first quarter of 1997 and third quarter of 1999 were missing from its public file. Moreover, you report that station WUPL(TV)'s records concerning compliance with commercial limits were missing from the public inspection file for the third quarter of 1998, and the third quarter of 1999. You indicate that the missing Children's Television Programming Reports and records concerning commercial limits were subsequently retrieved and placed in the public file. You state that an affiliated entity of Viacom Inc. (Viacom), the parent company of station WUPL(TV)'s licensee, acquired station WUPL(TV) in the fourth quarter of 1997.

In addition, in response to Section IV, Question 5 of station WUPL(TV)'s renewal application, you certify that, during the previous license term, station WUPL(TV) failed to comply with the limitations on commercial matter in children's programming specified in Section 73.670 of the Commission's Rules. In Exhibit 19, you state that the station is unable to locate its records concerning commercial compliance for the third quarter of 1998. Further, you indicate that although the station does not believe that commercial overages occurred during this quarter, it is unable to make an unqualified certification.

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<sup>10</sup> See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999) (citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Range Limited Partnership*, 71 RR 2d 882 (FOB 1992).

Finally, in response to Section IV, Question 7 of the station's renewal application, you certify that, during the previous license term, the average number of hours of core programming per week broadcast by station WUPL(TV) did not total three hours or more. In Exhibit 21 to the renewal application, you report that station WUPL(TV) broadcast an average of three hours per week of core programming during all periods of the license term in which an affiliate of Viacom owned the station. You also state, however, that prior to Viacom's ownership of the station, station WUPL(TV) did not broadcast an average of three hours per week of core programming during the second and third quarters of 1997.

Our records confirm that on September 29, 1997, the Commission granted an application to assign the license for station WUPL(TV) from Cornerstone, Inc. to Viacom Broadcasting of Seattle Inc. (Viacom Broadcasting) (BALCT-19970808IB). That assignment of license transaction was consummated on October 28, 1997. Accordingly, we will not consider the violations reported in station WUPL(TV)'s renewal application which occurred prior to the date on which Viacom Broadcasting acquired the license for station WUPL(TV).

On the other hand, WUPL(TV)'s failure to place in the station's public inspection file the required documentation after Viacom Broadcasting acquired the license for the station constitutes a willful and repeated violation of Section 73.3526(e)(11)(i)-(iii). Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.<sup>11</sup> In determining the appropriate forfeiture amount, we must consider the factors enumerated in Section 503(b)(2)(D) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."<sup>12</sup>

*The Commission's Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines (Forfeiture Policy Statement)* and Section 1.80 of the Rules establish a base forfeiture amount of \$10,000 for public file violations.<sup>13</sup> In this case, the

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<sup>11</sup> 47 U.S.C. § 503(b).

Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by the Act . . . ." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

<sup>12</sup> 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd 17087, 17100 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4).

<sup>13</sup> 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section I. Base Amounts for Section 503 Forfeitures; *Forfeiture Policy Statement*, 12 FCC Rcd at 17113, Appendix A, Section I.

licensee has corrected the violation. On the other hand, the station's public inspection file was missing required documents for four quarters during the license term. Considering the record as a whole, we believe that a \$4,000 forfeiture is appropriate for the violation in this case.

In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 309(k). Section 309(k) provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Communications Act or the Commission's Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.<sup>14</sup> If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”<sup>15</sup>

The public inspection file rule serves the critical function of making available to the public important information related to station operations. On balance, however, we find that WUPL(TV)'s violation of Section 73.3526 does not constitute a “serious violation” of the Commission's rules warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse. Further, we find that station WUPL(TV) served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application below.

Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of Act, and Sections 0.283 and 1.80 of the Rules, UPN Television Stations Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of four thousand dollars (\$4,000) for willful and repeated violations of Section 73.3526(e)(11)(i)-(iii) of the Rules.

IT IS FURTHER ORDERED that, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this Notice of Apparent Liability, UPN Television Stations Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, and P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under the installment plan should be sent

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<sup>14</sup> 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Order, Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, 11 FCC Rcd 6363 (1996).

<sup>15</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>16</sup>

IT IS FURTHER ORDERED that, a copy of this Notice of Apparent Liability shall be sent by First Class and Certified Mail, Return Receipt Requested to UPN Television Stations Inc. at the address listed above.

Finally, IT IS ORDERED that, the application (File No. BRCT-20050201AYM) of UPN Television Stations Inc. for renewal of license for station WUPL(TV), Slidell, Louisiana, IS GRANTED.

Sincerely,

Donna C. Gregg  
Acting Chief, Media Bureau

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<sup>16</sup> See 47 C.F.R. § 1.1914.